**MEMORANDUM OF UNDERSTANDING** TEMPLATE

<insert name> CONSORTIUM

**<insert party>**

**<insert party>**

**<insert party>**

**THIS AGREEMENT** dated day of YEAR

**PARTIES**

**<insert party> <**ABN> of <address> <insert (name if different from party)>

**<insert party> <**ABN> of <address> <insert (name if different from party)>

**<insert party> <**ABN> of <address> <insert (name if different from party)>

**<insert party> <**ABN> of <address> <insert (name if different from party)>

**<insert party> <**ABN> of <address> <insert (name if different from party)>

**<insert party> <**ABN> of <address> <insert (name if different from party)>

(hereinafter referred to individually as a “**Party**” and collectively as the “**Parties**”)

**BACKGROUND**

1. <insert function of lead entity
2. <insert overall objectives>
3. <insert funding background>
4. The Parties are the founding members of the <insert name> Consortium and have entered into this Agreement to set out the objectives of the Parties in establishing the Consortium and establish terms and conditions that regulate their activity and relationship as members of the Consortium.

**AGREED TERMS**

# DEFINITIONS AND INTERPRETATION

## Definitions

In this Agreement:

**Business Day** means a day that is not a Saturday, Sunday or public holiday in <insert state>.

**<If applicable> Commonwealth Standard Agreement** means the Commonwealth Standard Grant Agreement between the Commonwealth, represented by the Department <insert> and the <insert lead entity>, attached to this agreement as Annexure A <if applicable>.

**Consortium** means the <insert name> Consortium established and regulated under the terms of this Agreement.

**Consortium Members** means the Parties and any subsequent Party admitted to the Consortium pursuant to clause 12 of this Agreement.

**Contribution** means, in relation to a Party, any monetary contribution, assets, personnel facilities and services to be provided by the Party to the Consortium, from their own resources, for the purposes of achieving the Objectives and assisting in the Projects.

**<if applicable>Expiry Date** means the last date that one or both of the Grant Agreements expires.

**Further Term** means the further term of this Agreement commencing on the date immediately following Expiry Date for a period agreed between the Parties (if any).

**<if applicable>Grant Agreements** means the State Funding Agreement and Commonwealth Standard Agreement.

**Initial Term** means the initial term of this Agreement commencing on the date of this Agreement and concluding on the Expiry Date.

**Insolvency Administration** means the appointment of an administrator, receiver, receiver and manager, liquidator or provisional liquidator, and includes the commencement of winding up proceedings against a Party in a court.

**Intellectual Property** or **IP** meansall intellectual property rights, including:

* + - 1. copyright, patents, trademarks (including goodwill in those marks), designs, trade secrets, know how, rights in circuit layouts, domain names and any right to have confidential information kept confidential;
			2. any application or right to apply for registration of any of the rights referred to in paragraph (a); and
			3. all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist in Australia or elsewhere,

whether or not such rights are registered or capable of being registered.

**Lead Party** means the <insert name>.

**Material** means property, information, software, firmware, documented methodology or process, documentation or other material in whatever form, including any reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions, and the subject matter of any category of Intellectual Property.

**Objectives** means the objectives listed under clause 2 of this Agreement.

**Pre-existing Material** means Material owned or controlled by a Party before execution of this Agreement or subsequently developed by a Party independently from this Agreement.

**Project** means a discrete, time-bounded research, training or activity or series of activities to be carried out under clause 7 by some of all of the Parties or

third parties that has been recognised as a “Project” by the Consortium by formalising a Project Agreement.

**Project Agreement** means an agreement setting out the terms and conditions for a Project, as agreed in writing by all or some of the Parties and based on the form of agreement attached at Annexure C <if applicable> to this Agreement.

**<if applicable>State Grant Agreement** means the funding agreement between the Minister for <department> and the <lead entity>, attached to this agreement as Annexure B.

**Term** means the Initial Term and the Further Term (if any).

## Interpretation

In this Agreement, unless the context otherwise requires:

 1.2.1 headings do not affect interpretation;

 1.2.2 singular includes plural and plural includes singular;

 1.2.3 words of one gender include any gender;

1.2.4 a reference to a party includes its executors, administrators, successors and permitted assigns;

1.2.5 a reference to a person includes a partnership, corporation, association, government body and any other entity;

 1.2.6 a reference to this Agreement includes any schedules and annexures

to it;

1.2.7 an agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;

1.2.8 an agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;

1.2.9 a reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;

1.2.10 an unenforceable provision or part of a provision may be severed, and the remainder of this Agreement continues in force, unless this would materially change the intended effect of this Agreement.

## Background

The Background forms part of this Agreement and is correct.

# OBJECTIVES

The objectives of the Parties in establishing the Consortium are:

2.1 to establish a collaboration platform between governments, business and research/ education sectors to support acceleration of smart city innovations and technologies in <state/location>;

2.2 to identify Projects where some or all of the Parties can collaborate through providing expertise, research opportunities and capability, problem and solution identification, provision of capital, services, market intelligence and other relevant forms of support and input for a Project;

2.3 to ultimately contribute <overall outcome>.

# TERM

3.1 This Agreement commences on the date of this Agreement and then continues until the Expiry Date unless it is terminated earlier as provided for in this Agreement.

3.2 The Parties can extend the Initial Term of this Agreement for such Further Term as the Parties agree.

# LEAD PARTY

 4.1 The <insert name> is the grantee under the Grant Agreements.

4.2 The Parties agree that the <insert name> will be the Lead Party of the Consortium during the Initial Term.

4.3 During the Further Term, the Lead Party position will be rotated among the other Parties on a basis agreed between the Parties immediately prior to the expiry of the Initial Term.

 4.4 The Lead Party is required to:

4.4.1 administer any funding received for the Consortium under the Grant Agreements;

4.4.2 provide administrative support to the Consortium;

4.4.3 enter into any agreements or arrangements as authorised by the Parties;

4.4.4 refrain from entering into any agreement which is binding on a Party in the absence of a written authorisation from that Party; and

4.4.5 refrain from making any undertaking or representation on behalf of the Consortium (or any Party) except as specifically authorised by this Agreement, the other Parties to the Consortium or the relevant Party respectively.

# CONSORTIUM MEETINGS

5.1 The Consortium must meet at least three times per annum or more often as determined by the Consortium Members at a time, date and place fixed by the Lead Party for the Consortium meeting.

5.2 The Lead party will determine the Chairperson for each Consortium meeting and the proceedings (including the agenda for the meeting and governance/procedural matters).

5.3 The Lead Party will ensure that minutes of proceedings at a Consortium meeting of the consortium are recorded in writing and circulated to Consortium members in advance of the next Consortium meeting.

5.4 A decision of the Consortium is only valid if a simple majority of the Consortium Members agree.

# RELATIONSHIP TO GRANT AGREEMENTS

6.1 The Parties acknowledge they have read and understood the Grant Agreements.

6.2 The rights of the Parties are subject to the obligations applicable to the Consortium and Consortium parties under the Grant Agreements.

6.3 The Parties must do all things reasonably necessary to enable the <insert lead entity>, as grantee, to satisfy its obligations under the Grant Agreements.

# PROJECTS

 7.1 The Parties may conduct discrete Projects to facilitate achieving the Objectives.

 7.2 Projects will be determined from time to time by some or all of the Parties.

7.3 In relation to every proposed Project, a Project Agreement must be agreed upon and signed by the relevant Parties.

7.4 The Parties envisage that the Project Agreement will address the issues set out in the template project agreement annexed to this Agreement as Annexure C.

7.5 Each Project will be managed in accordance with the terms of the applicable Project Agreement.

7.6 For the avoidance of doubt, the Project Agreement template contained at Annexure C is a template only. The Parties intend that the final terms of a Project Agreement will be negotiated and agreed as the circumstances of each Project require.

# EXCLUSIVITY

## 8.1 Subject to clause 8.2, For the Term of this Agreement the Parties must deal exclusively with each other in respect of achieving the Objectives, and must not deal with or cause a related entity (within the meaning of the Corporations Act 2001 (Cth)) to deal with any other person in respect of the Objectives.

8.2 Nothing in clause 8.1 prevents a Party and its related entities from undertaking projects with clients which relate to, or include smart city innovation and technology.

# REPRESENTATIVES

Each Party must nominate one or more representatives who will act as their representative for the purposes of this Agreement (each being a **Representative**)

# INTELLECTUAL PROPERTY & PRE-EXISTING MATERIAL

## 10.1 Each Party retains ownership of its Intellectual Property and Pre-existing Material.

## 10.2 To the extent that a Party:

##  (a) uses its Intellectual Property and Pre-existing Material for the purpose of the collaboration between the Parties pursuant to this Agreement; or

##  (b) creates Intellectual Property in the course of collaborating with the other Parties pursuant to this Agreement,

#  that Party grants to the other Parties a perpetual, non-transferrable and royalty free licence to reproduce its Intellectual Property solely for the purposes of undertaking the collaboration during the term of this Agreement. Adaptation, sub-licensing, and any other use of the Intellectual Property or Pre-existing Material is strictly prohibited.

#  10.3 To the extent that clauses 10.1 and 10.2 above are inconsistent with the terms of a Project Agreement executed from time to time, the terms of the Project Agreement shall prevail to the extent of any inconsistency.

# CONFIDENTIAL INFORMATION

## Definition

In this clause **Confidential Information** of a party (**Disclosing Party**) means all information:

11.1.1 treated by the Disclosing Party as confidential; and

11.1.2 disclosed by the Disclosing Party to another Party or of which another Party becomes aware, whether before or after the date of this Agreement,

except information:

10.1.3 another Party creates (alone or jointly with a third person) independently of the Disclosing Party; or

10.1.4 that is public knowledge (otherwise than as a result of a breach of confidentiality by another Party or any of its permitted disclosees).

## Use and disclosure

A Party (**Recipient**):

11.2.1 may use Confidential Information of a Disclosing Party only for the purposes of carrying out this Agreement; and

11.2.2 must keep confidential all Confidential Information of each Disclosing Party except:

11.2.2.1 for disclosures to employees, officers and professional advisers of the Recipient who are made subject to the confidentiality requirements of this Agreement and who need to know for the purposes of this Agreement (and only to the extent that each needs to know); and

11.2.2.2 where disclosure is required by law.

# DISPUTE RESOLUTION

12.1 If a dispute arises in connection with this Agreement, a Party may give the other Party a notice specifying the dispute.

12.2 Within 14 days after the notice is given, the Parties (each represented by its Representative or other person authorised by it to bind it in connection with the dispute) must confer to resolve the dispute or to decide the method of resolving the dispute.

12.3 No Party may commence court proceedings in respect of the dispute or refer the dispute to arbitration within 14 days after that conference. This does not affect a Party’s right to seek injunctive or urgent declaratory relief.

# ADMISSION OF NEW PARTIES

13.1 Subject to the Grant Agreements, and the prior written consent of a simple majority of Consortium Members, the Lead Party may, from time to time admit a new party (**Applicant**) to the Consortium.

13.2 The Applicant must sign any agreements that the existing Consortium Members require, including to be bound by this Agreement.

# RETIREMENT AND REMOVAL FROM THE CONSORTIUM

14.1 **Retirement**

 A Party may retire from the Consortium and terminate its involvement in this Agreement by giving 30 days’ notice in writing to the other Parties, or earlier if agreed by the other Parties.

14.2 **Removal**

 The Lead Party may terminate a Party’s membership of the Consortium, if the Party:

14.2.1 Is in material breach of any of the terms of this Agreement, and where the breach is capable of remedy, the Party fails to remedy such breach within 30 days’ service of a written notice specifying the breach and requiring it to be remedied; or

14.2.2 is incompetent, commits any act of gross or persistent misconduct and/or neglects or omits to perform any of its duties or obligations under this Agreement; or

14.2.3 ceases to operate its business;

14.2.3 becomes subject to an Insolvency Administration (to the extent this is permitted by law); or

14.2.4 has done anything which brings or might reasonably be expected to bring the other Parties or the Consortium into disrepute or otherwise damage other contractors, employees, agents, customers, other business associates or the general public including, but not limited to, committing an act of fraud or dishonesty, whether or not connected with the Consortium or a Project.

and a simple majority of the remaining Parties (including the Lead Party) consent to the Lead Party’s decision to terminate under this clause 13.2.

# MISCELLANEOUS

## Alteration

This Agreement may be altered only in writing signed by each party.

## Entire agreement

This Agreement:

14.2.1 constitutes the entire agreement between the parties about its subject matter;

14.2.2 supersedes any prior understanding, agreement, condition, warranty, indemnity or representation about its subject matter.

## Assignment

No party can assign or otherwise transfer any of its rights and obligations pursuant to this Agreement, whether in whole or in part, without the prior written consent of the Lead Party.

## Waiver

A waiver of a provision of or right under this Agreement:

14.4.1 must be in writing signed by the party giving the waiver;

14.4.2 is effective only to the extent set out in the written waiver.

## Freedom of Information Act 1991

The Parties acknowledge that the *Freedom of Information Act 1991* (SA) (**FOI**

**Act**) gives members of the public rights to access Council documents. The FOI Act promotes openness in governance and accountability of government agencies and to achieve these objects confers on members of the public a legally enforceable right to be given access to documents, including contracts, held by the Council subject but not limited to such restrictions as are consistent with the public interest or commercial in confidence information.

## Exercise of power

15.6.1 The failure, delay, relaxation or indulgence by a party in exercising a power or right under this agreement is not a waiver of that power or right.

15.6.2 An exercise of a power or right under this agreement does not preclude a further exercise of it or the exercise of another right or power.

## Relationship

15.7.1 The Parties come together as a Consortium in the spirit of collaboration for mutual benefit. This Agreement does not however create a legal relationship of employment, trust, agency or partnership between the parties.

15.7.2 Except as otherwise provided in this Agreement, no Party has any authority to bind any other Party in any manner without the prior written consent of that Party

## Publicity

The Lead Party is responsible for making public announcements about the

Consortium and no other Party can make any public announcement about the Consortium unless it secures the prior written approval of the Lead party (which must not be unreasonably withheld).

## Survival

Each indemnity, obligation of confidence and other term capable of taking effect after the expiration or termination of this Agreement, remains in force after the expiration or termination of this Agreement.

## Governing law

15.10.1 This Agreement is governed by the law in <insert state>.

15.10.2 The parties irrevocably submit to the non-exclusive jurisdiction of the courts in <insert state>.

# NOTICES

16.1 A notice, demand, consent, approval or communication under this Agreement (**Notice**) must be:

16.1.1 in writing, in English and signed by a person authorised by the sender; and

16.1.2 hand delivered or sent by pre-paid post, electronic mail to an address of the recipient set out below, as varied by any Notice given by a Party to all Parties:

**<insert party>**Attention: <insert name, title>

Address: <insert address>

Email: <insert email>

**<insert party>**

Attention: <insert name, title>

Address: <insert address>

Email: <insert email>

**<insert party>**

Attention: <insert name, title>

Address: <insert address>

Email: <insert email>

**<insert party>**

Attention: <insert name, title>

Address: <insert address>

Email: <insert email>

**<insert party>**

Attention: <insert name, title>

Address: <insert address>

Email: <insert email>

 16.3 A Notice is deemed to be received:

16.3.1 if hand delivered, on delivery;

16.3.2 if sent by prepaid mail, four Business Days after posting (or seven

Business Days after posting if posting to or from a place outside Australia);

16.3.3 if sent by electronic mail, at the time and on the day shown in the sender’s electronic mail delivery report, if it shows that the Notice was sent to the recipient’s electronic mail address last Notified by the recipient to the sender;

16.3.4 if sent by facsimile, at the time and on the day shown in the sender’s transmission report, if it shows that the entire Notice was sent to the recipient’s facsimile number last Notified by the recipient to the sender.

However if the Notice is deemed to be received on a day that is not a Business Day or after 5:00pm, the Notice is deemed to be received at 9:00am on the next Business Day.

**EXECUTED** as an agreement

|  |  |
| --- | --- |
| **Signed** for **<insert party>** **<ABN>** by its authorised delegate in the presence of:  |   |
|   .............................................................................. Signature of witness  |   .............................................................................. Signature of authorised delegate  |
|   .............................................................................. Name of witness (print) |   .............................................................................. Name of authorised delegate (print)   .............................................................................. Position of authorised delegate  |
|  |  |

|  |  |
| --- | --- |
| **Signed** for **<insert party><ABN>** by its authorised officer:  |   |
|   |   .............................................................................. Signature of authorised delegate  |
|    |   .............................................................................. Name of authorised delegate (print)   .............................................................................. Position of authorised delegate  |

**Executed** by **<insert party>
<ABN>** pursuant to section 127 of the *Corporations Act 2001*

 .............................................................................. ..............................................................................

Signature of Director Signature of Director/Company Secretary

 (*Please delete as applicable)*

 .............................................................................. ..............................................................................

Name of Director (print)Name of Director/Company Secretary (print) *or*

 ..............................................................................

Signature of Sole Director and Sole Company Secretary

 ..............................................................................

Name of Sole Director and Sole Company Secretary (print)

|  |  |
| --- | --- |
| **Signed** for **<insert party>**by its authorised delegate in the presence of:  |   |
|   .............................................................................. Signature of witness  |   .............................................................................. Signature of authorised delegate  |
|   .............................................................................. Name of witness (print) |   .............................................................................. Name of authorised delegate (print)   .............................................................................. Position of authorised delegate  |
| **Signed** for **<insert party><ABN>** by its authorised delegate in the presence of:  |   |
|  .............................................................................. Signature of witness  |   .............................................................................. Signature of authorised delegate  |
|   .............................................................................. Name of witness (print)   |   .............................................................................. Name of authorised delegate (print)   .............................................................................. Position of authorised delegate  |

**Annexure List**

**<insert relevant attachments>**